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TRIAL BY JURY

BEFORE THE HONORABLE BEN J. ESCH
Superior Court Judge

Nome, Alaska
June 16, 1998
8:48 o'clock a.m.

APPEARANCES:

FOR THE PLAINTIFF: JOHN R. VACEK
District Attorney
Post Office Box 160
Nome, Alaska 99762

FOR THE DEFENDANT: EDWARD TOCKTOO
In Propria Persona

Page 2

1 witnesses you identified yesterday. Mr. Vacek, could you give
2 me an idea of your potential witnesses?
3 MR VACEK: We have three witnesses, Judge. Two girls and
4 Trooper Johnston.
5 THE COURT: All right. So, the same ones that testified
6 before the grand jury?
7 MR. VACEK: Correct.
8 THE COURT: All right. Then, we'll do what we can. Give
9 me the subpoenas. We'll get them issued and try to get them
10 out there to see if we can get them served.
11 MR. TOCKTOO: I couldn't fill out everything. I just put
12 in the names and where they're from because I don't know their
13 social security and (indiscernible - interrupted).....
14 THE COURT: That's fine. We'll do the best we can, Mr.
15 Tocktoo, as far as getting these people served but I've got no
16 guarantee at all that.....
17 MR. TOCKTOO: No. (Indiscernible - mumbled.)
18 THE COURT: I've got no guarantee at all we'll be able to
19 get them served. Those which we can find we will -- I'll ask
20 the troopers to do their best to get them served, but I have no
21 idea of what they've got available in the say of anything. One
22 of the problems, as I indicated, when you represent yourself,
23 is you may create problems and headaches and we'll do the best
24 we can.
25 MR. TOCKTOO: Yes. Your Honor, I'm just -- I was

Page 4

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P R O C E E D I N G S

2 NOA-3814
3 0940

THE CLERK: Superior Court for the Second Judicial
District at Nome is now in session. Honorable Ben Esch
presiding.

THE COURT: Thank you. We're on the record here this
morning in the matter of State of Alaska versus Edward Tocktoo,
case 2NO-S98-38. We're outside the presence of any potential
jurors. We're in chambers. It is approximately 10 minutes
until 9:00. Present is the defendant and Mr. Vacek,
representing the state.

Mr. Tocktoo, the reason I wanted to talk to you today
before we get started to trial and see where we stood with
regard to your witnesses?

MR. TOCKTOO: Yes, sir. I've got the subpoenas here.

THE COURT: You've got the subpoenas filled out. That's
fine but were you able to talk to anybody?

MR. TOCKTOO: I couldn't get access to the phone yesterday
and I kept asking if you called up there and they say you never
did (indiscernible - away from microphone).

THE COURT: I felt you were going to get the contact made.
I'll have to find out whether it was or wasn't made. As I
indicated, I can't guarantee anything. I don't run DOC. What
I have done is made arrangements so that we can fly in the four

Page 3

1 wondering if the court can appointment me a co-counsel.
2 THE COURT: No.
3 MR. TOCKTOO: No?
4 THE COURT: No. Mr. Tocktoo, you get represented or you
5 get to represent yourself. You don't get to represent yourself
6 and have somebody sitting there knows what they're doing. You
7 made a choice. I think it's a real questionable choice. But
8 you made your choice.
9 MR. TOCKTOO: Okay. And could I bring up some stuff right
10 now that.....
11 THE COURT: Sure. Absolutely.
12 MR. TOCKTOO: Before the jury selection starts and do -- I
13 didn't get no evidence on the -- on the repeal logbook and the
14 missing tape and, since Rule 45 was violated that I can make
15 a.....
16 THE COURT: Rule 45 was not violated. I've already
17 decided that.
18 MR. TOCKTOO: But.....
19 THE COURT: You don't get to talk about that anymore.
20 I've already ruled.
21 MR. TOCKTOO: I know but I'd like to make an indictment --
22 coming out to dismiss the indictment.
23 THE COURT: And you did. I treated that yesterday as a
24 motion to dismiss the indictment and I have denied your motion.
25 That one's decided already.

Page 5

1 Q Okay. Was it a hard decision for you to make way back
2 then?
3 A Not (Indiscernible - away from microphone).
4 Q But you did your job?
5 A (Indiscernible - away from microphone.)
6 Q Okay. Did the jury reach a verdict in that case?
7 A Yes. (Indiscernible - away from microphone.)
8 Q Was there anything about that process that made you think,
9 I just don't want to do that again?
10 A I (Indiscernible - away from microphone).
11 Q Okay. Did you understand what the charges were that the
12 judge just read to you?
13 A Yes, sir.
14 Q Okay. Mr. Tocktoo's charged with having sex with one girl
15 that was too young and trying to have sex with another
16 girl that was too young. Okay. Let's -- the state says
17 that with Bertha Barr -- he had sex with her three times,
18 and that she's too young for that. With Karen Moore,
19 who's 13, or excuse me, 12 years old, he tried to have sex
20 with her. She's too young. You agree that that's a good
21 law, you know, that a 28 year old shouldn't be having sex
22 with a 12 year olds and 13 year olds, 14 year olds?
23 A (Indiscernible - away from microphone.)
24 Q You agree that that's a good law?
25 A (Indiscernible - away from microphone.)

Page 22

1 Q Do you understand why that's against the law?
2 A Way too young.
3 Q Too young. Right. That's exactly it. Thank you, ma'am.
4 That's all the questions I have. Mr. Tocktoo might have
5 some questions.
6 THE COURT: Mr. Tocktoo, do you have any questions of Ms.
7 Muktoyuk (ph)?
8 MR. TOCKTOO: I can ask anything I want or just some
9 procedures on what's going on or what?
10 THE COURT: You're entitled to ask questions which may
11 allow you to make a decision about challenging her for cause,
12 exercising peremptory challenges, or her fitness, in your
13 opinion, to serve as a juror.
14 MR. TOCKTOO: No. I have no questions, Your Honor.
15 THE COURT: Very well then. Mr. Messenger.
16 MR. MESSENGER: Question number 1, Norman T. Messenger, M-
17 e-s-s-e-n-g-e-r. Neighborhood is East Sixth Avenue, near the
18 rec center in Nome, Alaska. Occupation -- question number 3, I
19 work for the Bureau of Land Management. I've been employed for
20 29 years. My spouse is Sandra Amazeen (ph). She works for the
21 City of Nome. Question number 4, I have no children. Question
22 number 5, Fresno, California, raised in Fresno, California.
23 Question 6, all outdoor hobbies and sports such as the shooting
24 sports. Question number 7, no. Question number 8, yes.
25 Question number 9, I know of no reason. Question number 10, I

Page 23

1 I know all members of the court with the exception of the
2 defendant. I know Trooper Johnston reasonably well.
3 THE COURT: Mr. Vacek?
4 MR. VACEK: Thank you.
5 VOIR DIRE OF NORMAN MESSENGER
6 BY MR. VACEK:
7 Q Do you think that your knowledge of Trooper Johnston would
8 prevent you from being a fair and impartial juror in this
9 case?
10 A I don't.
11 Q As the judge indicated, Mr. Tocktoo has elected to
12 represent himself. Most people with any knowledge of the
13 system would think that that's a -- not a smart thing to
14 do. What's your thoughts on that?
15 A I think the defendant is making a very big mistake in this
16 case.
17 Q Nonetheless, that's his mistake to make. Do you
18 understand that?
19 A I do. I do understand that.
20 Q Do you also understand that if -- it doesn't change the
21 rules of this game because represents himself and maybe
22 doesn't know -- have a clue about how this process works,
23 it doesn't change the rules in which the court operates.
24 A I agree, but it doesn't elicit any sympathy from me.
25 Q Okay. You also understand that it's not my job to protect

Page 24

1 his rights? I'm against him. I'm trying to have 12
2 people here find him guilty of these charges. Do you
3 understand that?
4 A I do.
5 Q It's not the judge's job to be his lawyer or to help him
6 out. The judge is kind of a referee in this process.
7 A I understand that.
8 Q In my experience, people that choose to represent
9 themselves say lots of stuff in court or can say lots of
10 stuff in court. You understand, however, the only thing
11 the jury can consider as evidence is -- from the
12 defendant, is if he elects to testify under oath. So, if
13 he chooses to say things in front of the jury, it doesn't
14 count as evidence unless it's under oath from the witness
15 stand?
16 A I understand that now.
17 Q Is there -- you indicated it doesn't elicit any sympathy
18 from you that the defendant doesn't have a lawyer. You
19 understand that's his choice?
20 A I do.
21 Q He had a lawyer. Fired him.
22 A I understand that.
23 Q Okay. Did you understand the substance of the charges
24 that the judge read here?
25 A In a general sort of way. Yes.

Page 25

1 the time, having sex with young girls just because I
2 admit to the other -- other crimes and pled no contest.

3 And the reason why I'm taking this -- the reason why
4 I took this to trial is because none of my court-appointed
5 lawyers didn't want to go to trial. They were stating
6 that they didn't have enough time to take my case to
7 trial. They just didn't want to take my case to trial.
8 One referred that she didn't spend enough time on my case
9 and she's been too busy on other cases. And the other
10 stated that he had to do another trial case, divorce
11 trial case down -- down south in Akiak or someplace down
12 south.

13 There was once a deal brought up to me for six years
14 presumptive and I told them no. I'm not going to take no
15 deal for something I didn't even do and then the -- when
16 she brought up the deal and I told her I ain't going to
17 take no deal and she replied to me that she can try to get
18 it down to a misdemeanor, one year. I told her I ain't
19 going to take no deals. I'm going to trial. And that's
20 when I was appointed another counsel, and at the same
21 time he came up from Anchorage he interviewed me over at
22 the jail. And he was saying that he -- I told him we're
23 going -- I'm going to trial on the 15th and he stated
24 right off he don't want to go to trial on the 15th. And
25 he wanted to go to trial next month and I said, no. I'm

Page 275

1 tired of doing time for something I didn't even do, and I
2 want to go to trial. And then he said, he told me that --
3 he withdrew from my case the same day he questioned me
4 and that's when I gave up my right for a counsel and just
5 take all this to trial myself.

6 To tell you the truth I didn't know what to expect
7 or what was going on. I didn't understand any Latin
8 words that was going on all the time. Yeah. It might be
9 a bit stupid for me to take this case by myself but I got
10 other reasons. Better things to do besides staying in
11 jail for something I didn't commit and just because I got
12 prior records. I'm stating that -- one of my lawyers was
13 stating that just because I got prior records I'm doing
14 this all the time. I'm doing the -- I'm having sex with
15 young girls all the time. It's going to be going on with
16 me like that and I didn't like that -- her remarks on
17 that. And I tried getting the evidence from her or -- or
18 the state. I didn't get nothing from them. I didn't get
19 anything from any lawyer or court appointed advocate. And
20 I was surprised that Mr. Bradley questioned these girls
21 and I didn't get no transcript from his questioning on
22 these girls. And I had a lot of witnesses saying that I
23 wasn't drinking. They never seen me drinking during
24 Thanksgiving or Christmas holidays.

25 Ever since I stepped into this court yesterday and

Page 276 Exhibit L

1 choose up the jury I was nervous and I'm still nervous
2 right now, because I don't know to expect -- I didn't
3 know what to expect -- I didn't know what -- what was
4 going on. One main reason I did this is because I wanted
5 to get out of there -- out of the jail and I've been
6 talking to my oldest boy and he kept asking me every time
7 I talk to him is when are you going home? I said I can't
8 tell you right now.

9 It took a lot of courage and took a lot just to -- to
10 do all this by myself and the time I've been threatened
11 that I would be getting -- I'd lose this case. Six years
12 was a lot of time for something I didn't even do. A deal.
13 And it was trying to be dropped down to a misdemeanor for
14 one year. And I said no. I ain't going to take no deals
15 for something I didn't do.

16 And I tried -- I tried -- when I was up there, I
17 tried looking into the lawbooks but I didn't have enough
18 time. I came up with some few but couldn't be used here.
19 So, I don't know what I just put myself into. I don't
20 know what the state -- to tell you the truth, I didn't
21 know -- I don't know the procedure on this. I just did
22 my -- my best. My home just to prove -- to state I
23 didn't do this. I wasn't there. Or just to prove to you
24 jurors and I was nervous and I'm still nervous and I'm
25 scared. That's all, Your Honor.

Page 277

1 THE COURT: You finished? Cross examination.

2 EDWARD TOCKTOO

3 testified as follows on:

4 CROSS EXAMINATION

5 BY MR. VACEK:

6 Q Mr. Tocktoo, you talked about a lot of things except the
7 one thing that this trial was about. Let's make it real
8 simple. Did you ever have sex with Bertha Barr?

9 A No.

10 Q Did you ever try to have sex with Karen McCarthy, Karen
11 Moore?

12 A No.

13 Q Now, you hard them say that that happened. Right?

14 A Yeah.

15 Q Now, we know what your motive is for not wanting to be
16 for -- we know what your potential motive is for lying.

17 You don't want to do a lot of time in jail. Right?

18 A Yeah.

19 Q Now, what's their motive for making up this terrible story
20 about you?

21 A I don't know. I....

22 Q You've had a lot of time to think about this and I'm sure
23 you must have some explanation for why they're telling
24 lies about you.

25 A They're probably just scared that another name or

Page 278